

EXHIBIT “A”

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

Case No. 9:22-cv-80852-AMC

AFFORDABLE AERIAL PHOTOGRAPHY, INC.,

Plaintiff,

v.

STR8 REAL ESTATE COMPANY and
ANTHONY L. PIZZARELLI,

Defendants.

DECLARATION OF ROBERT STEVENS

Robert Stevens does hereby declare pursuant to 28 U.S.C. § 1746:

1. I am over the age of 18 and otherwise competent to testify. I make the following statements based on personal knowledge.

2. I reside in Vero Beach, Florida. I am an experienced professional photographer and make a living from photography. Through Affordable Aerial Photography, Inc. ("AAP"), I provide high-end real estate photography services to real estate brokers and agents in South Florida.

3. I am AAP's principal photographer and its founder. My work is sought after by real estate professionals throughout South Florida. For over a decade, I have photographed some of the most expensive real estate listings in U.S. history, including Donald Trump's mega-mansion in Palm Beach listed for \$125 million. From Palm Beach to California, the Bahamas and New York, I have been contracted to photograph the estates of Madonna, Celine Dion, Don King, Greg Norman, Rod Stewart, Ivana Trump, James Patterson, Alexander Haig, Ann Downey, Frank McKinney, Bill Gates, Tommy Lee Jones, Bryant Gumble and Chris Evert.

4. The techniques that I use are difficult to execute effectively. My photos are made

using special aerial photography capture techniques that employ drones or other technology to capture photographs from angles that would not otherwise be possible.

5. I maintain a commercial website (www.robertstevens.com) which describes the photography services offered by me, hosts a sample portfolio of photographs taken by me, and invites prospective customers to contact me to arrange for a professional photo shoot.

6. I own each of the photographs available for license on my website and serve as the licensing agent with respect to licensing such photographs for limited use by my customers. To that end, my standard terms include a limited, non-transferable license for use of any photograph by the customer only. My license terms make clear that all copyright ownership remains with me and that my customers are not permitted to transfer, assign, or sub-license any of my photographs to another person/entity.

7. In 2012, I created a professional photograph (titled “23 N Beach Rd Jupiter Island aerial 2012 AAP, Dec. 5, 2012”) (the “Work”) depicting an aerial view of Jupiter Island.

8. Consistent with my general practices, the Work contains (in the bottom left corner) my copyright management information as follows: “©AAP 2012 all rights reserved.”



9. The Work was registered by me with the Register of Copyrights on July 23, 2015 and was assigned Registration No. VA 1-967-114. A true and correct copy of the Certification of Registration pertaining to the Photograph is attached to the Complaint as Exhibit A thereto.

10. AAP owns all rights, title, and interest, including copyrights, in and to the Work by nature of both written assignment by me to AAP and by nature of the fact that the Work was work for hire taken on behalf of AAP.

11. Significant technical attributes were required to make the Work. This photograph was captured using a Canon EOS 1Ds Mark III camera (captured at F/5.6 and ISO 200), focal length of 115mm and shutter speed of 1/1600th second. The photograph was captured from within a helicopter. These specific camera settings were selected because the helicopter was in motion and shaking, so I had to use detailed settings to mitigate that issue during the photoshoot.

12. To take this photograph, I had to find a skilled, trustworthy and certified pilot and rent a helicopter with this pilot for about an hour during a day when the weather was good. During the year the photo was taken (2012), photographic drone technology was not as prevalent or advanced as it is now, so using my helium balloon rig or using a helicopter were some of the only ways to take high quality photos of the house from such a height. Additionally, I had to ask the pilot to adjust the helicopter so that the doors remain open during the flight. If the doors were closed, I would not be able to take a clear photograph of the property because the window of the helicopter would distort the image and make it impossible to take a clear photograph; the reflection of the window, any dirt spots or distortions on the window would be in focus, very visible and would result in a poor-quality photograph. I believe that not just anyone could take that photograph in this manner as some other people and other photographers might have a fear of heights and/or might be unwilling to hang over the edge of a helicopter with thousands of dollars of photographic

equipment at risk.

13. I also had to consider the weather conditions, and I had to direct the pilot where to go, how high/low to fly the helicopter and from which angle to approach the house. I needed to take a photograph of this estate that would showcase its proximity to the ocean, its size, architectural details, the front yard and back yard all in one photo. The distance from which the photograph was taken, as well as the settings of my camera, including zoom, had to be very specific; if the photo was taken from too far away or using the wrong settings, architectural and design details of the estate would not be showcased; on the other hand, if the photo was taken too close up or using the wrong camera settings, the photo would not illustrate the size of the home, the size of the backyard and front yard or how close it was to the ocean and size of the beach. I used my many years of experience, my expertise and very advanced/expensive camera equipment to take this photograph and I believe it to be very valuable for those reasons.

14. The Work is scarce not only due to its high quality but also the unique techniques applied to achieve such amazing results.

15. The typical range of fees I would charge for the type of non-exclusive commercial use involved in this lawsuit (meaning use for purposes of advertising or promoting the licensee's business) and displaying on the internet of one of my copyrighted photographs similar in quality and popularity to the Work is approximately \$1,500 per year. I do not pro-rate my licensing fees by the amount of months/days that any particular work is actually utilized.

16. On a date after the copyright registration of the Work, Defendants copied the Work without my permission and used it to advertise and promote their business as shown by the Complaint in this lawsuit.

17. Defendants have never been licensed to use the Work for any purpose.

18. After Defendants copied the Work, they made further copies and distributed the Work on the internet to promote their business.

19. I discovered Defendants' unauthorized use/display of the Work in February 2022. AAP is a small business operated by me. I spend most of my days in the field on assignment taking photographs. I have taken thousands (if not tens of thousands) of photographs that have been published online over the years, and I endeavor on an ongoing basis to utilize reverse image search tools (such as those available at www.google.com, www.bing.com, www.tineye.com) to search for a rotating sub-set of my photographs that may be illegally/improperly published by non-licensees. Given the volume of photographs that I have taken and the fact that the majority of my time is dedicated to taking professional photographs for my clients, I was reasonably unable to discover Defendants' improper use of the Work prior to February 2022 when its use appeared in one such reverse image search.

20. Through my counsel, I notified Defendants of the allegations set forth herein in February 2022. To date, I have been unable to resolve the dispute and Defendants have offered nothing to compensate AAP for the use of the Work.

21. Had Defendants hired AAP to create and license the Work and to reproduce and display the Work on their website, I would have charged at least \$1,500 per year to use the photograph for the type of commercial use at issue.

22. The ability of Defendants to reproduce, modify, distribute and display the copyrighted Work for its own commercial benefit without compensation to me greatly impairs the market value of the Work since others competing with that business, or in related business areas, will not want to obtain a license to my Work if they are already associated with a competing business. Similarly, potential licensees of my copyrighted photographs will not want to pay my

license fees if they see other commercial enterprises taking and using my photographs for its own commercial purposes without paying any fee at all.

23. The Work has lost significant value to its scarcity by the widespread and continuing dissemination resulting from Defendants' infringement.

24. When I publish my works, including the one at issue here, I include Copyright Management Information ("CMI") in the form of a copyright notice/watermark applied to either the bottom left or bottom right corner thereof.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

DATED: 10/20/2022.

Robert Stevens

ID ELkMkmyePDmcfBeBqzmMwUfK

Robert Stevens

eSignature Details

Signer ID:	ELkMkmyePDmcfBeBqzmMwUfK
Signed by:	Robert Stevens
Sent to email:	skyphotoshots@yahoo.com
IP Address:	73.0.110.198
Signed at:	Oct 20 2022, 6:43 pm EDT